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In re Application of
Carson et al.
Application No. 09/313,048
Filed: May 17, 1999(CPA filed 10/16/2000)
Attorney Docket No. 103.0009US1

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DECISION GRANTING PETITION

This decision is in response to applicants' 'APPLICATION FOR PATENT TERM ADJUSTMENT UNDER 37 CFR 1.705(b)" filed with the payment of the issue fee on September 27, 2004. Applicants request that the Office adjust the patent term adjustment at the time of the mailing of the notice of allowance from one hundred and ninety-two (192) days to five hundred and twenty-one (521) days.

Applicants application is **GRANTED** to the extent herein indicated. Applicants correct determination at the time of the mailing of the notice of allowance is five hundred and twenty-two (522) days. The Office will adjust the PTA calculation to reflect that the correct determination at the time of the mailing of the notice of allowance is 522 days,

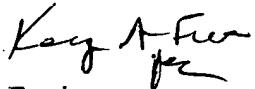
Applicants assert that the Office erred in the amount of Office delay assessed for the failure to reply to the CPA in a timely manner. Applicants assert that the CPA was filed on October 16, 2000 and was responded to on July 2, 2003, a five hundred and sixty-two day delay. See 37 CFR 1.702(a)(1). Applicants assert that the Office erred by measuring the fourteen month start of the clock from the date of the date of the reconstruction of the file rather than actual date of the filing of the CPA. Applicants do not contest the forty-one days of PTA reduction based upon the failure of applicant to reply within three months. See 37 CFR 1.704(b).

Applicants arguments are persuasive. The Office erred in measuring the fourteen month clock from the date that the file was reconstructed rather than the date of the filing of the CPA, October 16, 2000. The Office should have measured the Office delay from December 17, 2001 until July 3, 2003, a five hundred and sixty-three (563) day delay rather than two hundred and thirty-three days assessed in the PTA calculation. Accordingly, the Office finds that the correct PTA determination at the time of the mailing of the notice of allowance is five hundred and twenty-two (522) days.

After the mailing of this decision, the office will forward the application to the Office of Patent Publications for a prompt issuance of the patent. The Office apologizes for any delay in issuing the patent and notes that additional delay will be assessed at the time of the issuance of the patent for the Office's failure to issue the application within four months of the payment of the issue fee. See 37 CFR 1.702(a)(4).

The Office further notes that applicant have paid the required \$200.00 fee for deciding this application. No additional fees are required by applicants.

Any questions concerning this decision should be directed to Kery A. Fries, Senior Legal Advisor, Office of Patent Legal Administration, Office of Deputy Commissioner for Patent Examination Policy at 571-272-7757.



Karin Ferriter
Office of Patent Legal Administration
Office of Deputy Commissioner
for Patent Examination Policy

cc: Copy of Adjusted PAIR calculation (522 days)